

NORTH CAROLINA
WAKE COUNTY

AGREEMENT

THIS AGREEMENT entered into as of the _____ day of _____, 20____, by and between the COUNTY OF WAKE, a body politic and corporate of the State of North Carolina (the "County") and the TOWN OF WAKE FOREST, a North Carolina municipal corporation ("Town") (together referred to as the "Parties").

PRELIMINARY STATEMENT

WHEREAS, pursuant to Session Law 1991-594, Wake County authorized a prepared food and beverage tax of up to 1% of the sales price of prepared food and beverages sold at retail; and

WHEREAS, pursuant to Session Law 1991-594, Wake County and City of Raleigh subsequently entered an Interlocal Agreement ("ILA") designating funds from the Occupancy and Prepared Food/Beverage Taxes for the purpose of acquiring, constructing, or financing convention centers, civic centers, performing arts centers, coliseums, auditoriums, and facilities related to sports and cultural events; and

WHEREAS, the terms of the ILA and subsequent amendments provide a basis for distribution of funds by the City and County consistent with the enabling legislation; and

WHEREAS, in April 2016 the Wake County Board of Commissioners approved a competitive process open to any non-profit or for-profit organization to allocate up to Three million three hundred fifty thousand and no/100s Dollars (\$3,350,000.00) of the Major Facilities Capital Trust Fund established with hotel/motel and prepared food and beverage taxes and subsequently issued a Request for Proposals ("RFP #16-045") for projects meeting the criteria set forth in the ILA; and

WHEREAS, Town submitted a response to RFP #16-045 on or before June 15, 2016 for the construction of a project described as the Wake Forest Renaissance Center for the Arts Proposal (the "Renaissance Project"); and

WHEREAS, the Renaissance Project meets all criteria of RFP #16-045; and

WHEREAS, the County selected the Renaissance Project after due consideration of all proposals submitted through the use of a competitive selection process; and

WHEREAS, on November 7, 2016 the Wake County Board of Commissioners authorized the requested funding commitment to the Town in the amount not to exceed Three Hundred Forty Eight Thousand Five Hundred Thirty and no/100s Dollars (\$348,530.00) ("Funding Commitment") for capital costs related to the construction and

renovation of the Renaissance Project contingent upon the terms and conditions set forth herein; and

WHEREAS, Town has accepted the Funding Commitment for capital costs related to the construction and renovation of the Renaissance Project contingent upon the terms and conditions set forth herein.;

NOW THEREFORE, in consideration of the mutual promises contained herein, County and Town agree as follows:

ARTICLE I
SCOPE AND DESCRIPTION OF THE RENAISSANCE PROJECT

The Renaissance Project shall be located in Wake Forest, Wake County, North Carolina. The purpose of the Renaissance Project is to renovate, repair and enhance the Wake Forest Renaissance Center for the Arts facility at 405 South Brooks Street, Wake Forest, North Carolina (“Arts Facility”) that will allow expanded use of facility to accommodate conferences, business meetings, private celebrations, in addition to its current and expanding arts and cultural uses. The Arts Facility has been in operation since November 2013 and hosts over 50 ticketed events annually.

The Wake Forest Renaissance Centre for the Arts consists of two buildings. The first building (the “Main Building”) is a two story, 10,000 square foot main building with 4,700 square feet of meeting and event space, including a 535 square foot stage. The second building (the “Arts Annex”) is an adjacent one story 3,000 square foot building consisting of five open classrooms, two administrative offices, a small copy room, and two bathrooms.

The Renaissance Project shall consist of renovation and repair of critical interior, exterior, and technical elements of the two buildings. The original Renaissance Project Proposal is attached to this Agreement as **Exhibit “A”** and incorporated by reference.

The renovation of the Arts Facility is planned in PHASES 1-2 beginning in FY2016/17 through FY2018/19 as more fully described in Exhibit “B” Wake Forest Renaissance Centre for the Arts Phase 1 & 2 of Restorative and Refurbishment Plan. This revised Plan was submitted after the original project proposal and is accepted as the official schedule and budget for the project.

ARTICLE II
RENAISSANCE PROJECT SCOPE

Town, as Owner of the Renaissance Center for the Arts, is solely responsible for all Renaissance Project costs, decisions, the preparations of all plans and specifications, and for developing the Renaissance Project in accordance with this Agreement and the incorporated Renaissance Project Proposal. The Town conducted cost estimates for construction, repairs, technical equipment and furniture, including a 20% inflation factor in

the cost estimates provided. The Town determined that the renovations planned as part of the Renaissance Project will not cause an impact on existing infrastructure such as roads or water and sewer facilities. Any comments or suggestions provided by the County, except as otherwise provided by the Agreement, shall be given solely for the purposes of monitoring compliance with the terms of the Agreement, and shall not in any event be construed as a representative or directive regarding the Renaissance Project decision.

ARTICLE III OWNERSHIP of REAL PROPERTY

Town currently owns the buildings comprising the Arts Center, consisting of the Main Building located at 405 S. Brooks Street, Wake Forest, North Carolina, and the Arts Annex Building located at 407 S. Brooks Street, Wake Forest, North Carolina. At the execution of this funding agreement, the combined debt on the two structures is \$196,835. The Town is current on all debt obligations and anticipates paying all debt on the two structures in full by March 2018. As a condition of this Agreement, Town shall retain full ownership and control of the Arts Facility (including the Main Building, and Arts Annex), structures, land, equipment, revenues, and any other related land values or profits, unless otherwise expressly provided for in this Agreement. Town shall be solely responsible for payment of any debt and none of the Wake County funds for the Renaissance Project shall be used to retire this debt. If ownership is transferred notwithstanding the provisions of this Section, Town shall be required to notify the County as soon as practicable but in any event within three (3) business days of the execution of any contract for sale or lease of the Arts Facility or any part thereof including the Main Building and/or the Arts Annex. ; or if there is no contract, if any interest in the Arts Facility property is or is intended to be transferred to an owner other than Town.

ARTICLE IV TOTAL FUNDING FOR RENAISSANCE PROJECT

A. The total estimated expenditure for the Renaissance Project, including PHASES 1-2 of the Restorative and Refurbishment Plan and a 20% inflation factor, is Nine Hundred Ninety Five Thousand Eight Hundred Dollars and no/1.00s (\$995,800.00) as set forth in the Town's presentation to the Wake County Board of Commissioners on October 10, 2016. In addition to County committing funding pursuant to this Agreement, the Town has committed to provide funding in the amount of Six Hundred Forty Seven Thousand Two Hundred Seventy Dollars and no/1.00s (\$647,270.00) from the following sources:

- FY2017 General Fund Revenues = \$159,770
- FY2018 General Fund Revenues = \$487,500

B. The County Funding Commitment shall be delivered to Town contingent upon the conditions defined in Article V of this Agreement. The above-listed descriptions of both dollar amounts and funding sources are for illustrative purposes to show the funding required by the Town for the Renaissance Project relative to the County's grant. Nothing herein shall bind the Town to draw specific dollar amounts from any particular funding source as described.

C. County shall only provide the applicable funding when due and upon satisfaction of conditions as outlined in Article V of this Agreement. Any funds not paid by County to Town under this Funding Agreement shall remain, or if drawn, be returned to the Major Facilities Capital Trust Fund.

D. The Renaissance Project is under design with construction to be completed within thirty-six (36) months. County and Town agree that the Renaissance Project shall be completed on or about June 20, 2019 (the "Completion Date"). This date is intended to be tentative and Town shall not be subject to any penalties or liquidated damages related to the Completion Date, therefore time is not of the essence with respect to the Completion Date for purposes of this Funding Agreement. Prior to or on the Completion Date, Town may request, and the Wake County Manager may reasonably grant, extensions of time for the completion of the Renaissance Project, subject to the conditions of funding set forth in Section V. Any such extensions of time shall not be unreasonably withheld by the Wake County Manager.

E. If requested by Town, County agrees to provide additional documentation to evidence the County's Funding Commitment as outlined herein for the purpose of Town financing the Renaissance Project. This includes, but is not limited to, providing a written affirmation of County's contribution to the Renaissance Project upon the terms and conditions of this Agreement. In no event shall the County be required to guarantee any commercial or private loan, or provide any manner of commitment or financing beyond what is set forth in this Agreement.

F. Town represents that this Renaissance Project shall not require the on-going support of Wake County's general operating funds. Nothing herein shall obligate County to provide operating funds for the Renaissance Project after completion.

G. County shall not fine or penalize Town in any way, unless specifically permitted in this Agreement.

H. Town agrees to abide by any review, reporting, or other legal requirements established by state or local law, County resolution, or Interlocal Agreement relating to the use of these funds.

ARTICLE V CONDITIONS OF FUNDING

Subject to Town's performance of the obligations of this Agreement, County shall tender the Funding Commitment in an amount up to and not to exceed Three Hundred Forty Eight Thousand Five Hundred Thirty and no/100s Dollars (\$348,530.00), such amount equal to 35% of total estimated total cost of the Renaissance Project in the amount of \$995,800.00, upon the following terms:

A. The County's funding for the project shall not exceed 35% of the total approved estimated project cost as set forth in the Response to Request for Proposals ("RFP #16-045"). In the event the total cost of the project is less than the estimated cost of Nine Hundred Ninety Five Thousand Eight Hundred Dollars and no/1.00s (\$995,800.00), then the County's payment will be recalculated to equal 35% of the total Project cost as demonstrated by actual expenditures incurred by Wake Forest. In no event shall the County be responsible for paying more than the total committed amount of \$348,530.00, even if the actual cost of the Renaissance Project or any phase thereof exceeds the estimated cost.

B. The County shall tender the total of the Phase I payment of Ninety Four Thousand One Hundred Eighty Five and no/100s Dollars (\$94,185) or if less than \$94,185, an amount equal to 35% of the documented cost of Phase 1 to Town at such time as Town has provided:

1. Satisfactory documentation of total Renaissance Project budget including Phases I and Phase 2 of the Renaissance Project and Town funding commitments at time of funding request.

2. A letter from the Town Manager certifying that the building improvements in Phase I are complete, any required certificates of occupancy or permits have been obtained, and the Phase I improvements to the Arts Facility are fully operational. This letter shall include photos of the before and after conditions of the improved area and confirmation of all scheduled events in the Arts Facility that benefit from the improvements.

3. The County reserves the right to conduct a site inspection to verify Renaissance Project completion and the Arts Facility readiness prior to authorizing disbursement of payment to Town.

C. The County shall tender the total Phase 2 payment of up to Two Hundred Ninety Seven Thousand Eight Hundred Fifteen and no/100s Dollars (\$297,815) or if less than \$297,815, an amount equal to 35% of the documented cost of Phase 2 at such time as Town has provided:

1. Satisfactory documentation of total Renaissance Project budget including Phases I and Phase 2, of the Renaissance Project and Town funding commitments at time of funding request.

2. A letter from the Town Manager certifying that the building improvements in Phase 2 are complete, any required certificates of occupancy or permits have been obtained and the Phase 2 improvements to the Arts Facility are fully operational. This letter shall include photos of the before and after conditions of the improved area and confirmation of all scheduled events in the Arts Facility that benefit from the improvements. The letter shall include certification of the actual expenditures for the project compared with budgeted expenditures.

3. The County reserves the right to conduct a site inspection to verify Renaissance Project completion and the Arts Facility readiness prior to authorizing disbursement of payment to Town.

D. All requests for disbursement of the Funding Commitment under this section must be made within thirty-six (36) months of the effective date of this Agreement unless the parties have entered into a written agreement for an extension of this date.

E. If Town does not make a request for disbursement or does not meet the conditions precedent to disbursement under this section such that all or part of the funds committed are not disbursed, then such funds shall remain a part of the Major Facilities Capital Trust Fund free and clear of any further obligation to Town under this Agreement.

F. In the event that less than all Phases are completed, then the Project Performance goals shall only be modified in the discretion of the County Manager.

ARTICLE VI
PERFORMANCE GOALS

Town acknowledges that by accepting the County’s Funding Commitment and by signing the Agreement, the Project, is subject to certain target Performance Goals as described below in Table 1:

Fiscal Year of Operation	Total projected visitors (outside a 50 mile radius)	Total projected Wake County or day visitors	Target Number of Planned Event Days (Cumulative)
1	6,300	14,700	70
2	6,800	15,200	144
3	7,050	16,450	222
4	7,200	17,800	302
5	8,250	19,250	384
6	8,700	21,300	466
7	9,600	22,400	550
8 (Rollover Period)			550

A Planned Event Day will be defined as an event that generates at least 50 to 100 visitors. A Large event with greater than 100 visitors will be counted as two event days.

An event is defined as event that takes place at the Arts Facility that includes spectators in addition to participants (this definition excludes arts classes held at the facility but includes performances, business events, and exhibits).

Year of Operation shall be defined as a 12 month period beginning July 1, 2018 or the date of the first Planned Event Day after the completion of the Project, whichever comes sooner.

A. Performance Reporting. Town shall agree to provide annual reporting to the County Manager including a list of the date, a brief description, and estimated in town and out of town (50 miles or more) attendees for all events held at the Arts Facility that year. Annual performance reporting shall be submitted using attached forms no later than 60 days after the close of the fiscal year, beginning in FY2019. In the event that the facility performance does not achieve the target event days at the end of each Performance Reporting Period, Town must submit a plan to the County Manager to achieve performance goals. For the purpose of calculating performance goals, any Event Days exceeding the required number in a reporting period may be rolled over and counted towards the performance goals for other reporting periods. If after **7 years** of operation, the cumulative performance goal of 550 event days is not met, Town will have another one-year Performance Reporting Period to achieve the performance goal. For the purpose of calculating performance goals, any target event days exceeding the required number in a reporting period may be rolled over and counted towards the performance goals for other reporting periods.

B. Expiration Of Performance Goals. After the Arts Facility has reported seven (7) years of operations or the Total Number of Event Days exceeds the cumulative total of target Event Days, whichever is sooner, the Renaissance Project shall no longer be bound by Performance Goals of any kind and any such provision herein or in the Agreement shall expire.

C. Good Faith. The Parties agree to enforce and abide by the terms of this agreement in good faith and shall, in addition to Table 1, annual reports, and applicable performance plans, review all reasonable and good faith efforts made by Town to fulfill all Renaissance Project requirements in any evaluation of Performance Goals, and in the event project goals are not met, commit to discuss further mitigation efforts. Furthermore, the Parties hereby agree that Article VIII of the Agreement shall also apply to this MOU and any evaluation of Performance Goals.

ARTICLE VII INDEPENDENT CONTRACTOR

The parties acknowledge that Town is an independent contractor, and that nothing in this Agreement is intended, and nothing will be construed, to create any form of partnership or joint venture relationship between Town and the County, or to allow either to exercise control or direction over the other; notwithstanding that each party is bound by the terms and conditions of this Agreement. Neither party is an officer, agent, or employee of the other party for any purpose.

ARTICLE VIII
LIABILITY FOR DELAY IN PERFORMANCE

Neither party shall be liable to the other, or be deemed to be in breach of this Agreement, for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight, embargoes, or unusually severe weather. Date or times of performance, including the term of this Agreement or eligibility for funding, may, but are not required, to be extended by the County to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

ARTICLE IX
TERMINATION OF RENAISSANCE PROJECT PRIOR TO COMPLETION

Should the Renaissance Project or any Phase thereof become terminated prior to completion, Town shall remain the sole owner of the Renaissance Project property, including all land, structures, and equipment. County shall have no funding obligation and no ownership claim to any part of the Renaissance Project unless expressly described in this Agreement.

The County's obligation to fund under this Agreement is not transferrable to any subsequent owner or interest holder of the Renaissance Project or any Phase of the Renaissance Project.

ARTICLE X
INTERRUPTION OF OPERATION AFTER COMPLETION OF RENAISSANCE PROJECT

Should the ARTS FACILITY or any part thereof cease to operate at any time after the County has tendered any part of the Funding Commitment but before performance goals are met, and the Town transfers all or part of the property upon which it is located to an owner who does not operate the property for the purpose intended under this Agreement such that the performance goals of the Funding Agreement are frustrated ("Subsequent Operation"), then the Town shall require the new owner to repay the County at the closing of the sale all of the Funding Commitment previously tendered based on the year of operation in which operation ceases per the schedule below. In the event that less than the full funding commitment has been tendered by the County, then Town shall require the new Owner to repay the full amount at the closing of the sale.

Unamortized Portion of Original Facility Cost to be Paid to the County Upon Contract Termination Repayment Amount = \$348,530	
Year of Subsequent Operation	Payment to County
1	\$ 280,000
2	\$ 210,000
3	\$ 140,000
4	\$ 70,000
5	\$ -

Regardless of ownership of the Property, if the property continues in Operation for the purpose intended under this Agreement such that the performance goals of the Funding Agreement are not frustrated, there will be no adjustment required. "Operation" shall be defined as a state of readiness of the Arts Facility that allows the facility or facilities to be open and ready for intended operations in the ordinary course of business.

ARTICLE XI
NO THIRD PARTY BENEFICIARIES

This Agreement is not intended to and shall not be interpreted to inure to the benefit of any third parties.

ARTICLE XII
MODIFICATION

This Agreement may only be modified in writing signed by both Parties; provided that any change in the scope of the Renaissance Project or manner or amount of the payment obligation of the County hereunder shall require approval of the Board of Commissioners.

ARTICLE XIII
ASSIGNMENT

Town shall not assign this Agreement, either in whole or in part, without the prior written approval of the County. County shall not assign any of its duties under this

Agreement to any private or public agency, corporation, firm, or individual without the prior written approval of Town.

ARTICLE XIV
MISCELLANEOUS

- A. Notices. All notices or other communications hereunder to Town and the County shall be sufficiently given and shall be deemed to have been received five (5) Business Days after deposit in the United States mail in certified form, postage prepaid, to the County and Town, as the case may be, at the following addresses:

If to the County: Mr. James K. Hartmann, County Manager
Deliver to: 301 South McDowell Street, Fourth Floor
Mail to: PO Box 550
Raleigh, North Carolina 27602
Tel: (919) 856-5555
E-mail: Jim.Hartmann@wakegov.com

If to Town: Mr. Kip Padgett, Town Manager
301 S. Brooks St.
Wake Forest, NC 27587
Tel: (919) 435-9400
E-mail: kpadgett@wakeforestnc.gov

- B. Severability. In the event any provision in this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- C. Execution. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- D. Applicable Law. This Agreement shall be governed by and be construed in accordance with the laws of the State of North Carolina. Jurisdiction for the resolution of any conflict arising from this Funding Agreement shall lie with the General Court of Justice of the State of North Carolina with venue in Wake County, North Carolina.
- E. Headings. Paragraph or other headings contained in this Agreement are for reference purposes only and are not intended to affect in any way the meaning or interpretation of the Agreement.

IN WITNESS WHEREOF, Town has caused this Agreement to be executed in its name by its duly authorized officers and its corporate seal to be impressed hereon, and the County has caused this Agreement to be executed in its name by its duly authorized officers and its corporate seal to be impressed hereon, as of the Effective Date.

TOWN OF WAKE FOREST

ATTEST:

By: _____
Kipling D. Padgett
Title: Town Manager

By: _____
Deeda Harris
Title: Town Clerk

SEAL

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Aileen J. Staples
FINANCE DIRECTOR

COUNTY OF WAKE, NORTH CAROLINA:

By _____
Chairperson

Denise Hogan
Clerk to the Board of Commissioners

Approved as to form:

Scott W. Warren
County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

FINANCE DIRECTOR

The person responsible for monitoring the contract performance requirements is:

_____ Department Head Initials

Event Detail

(This form shall be attached to all Performance Reporting Summaries)

Year of Operation: _____

Report Date: _____

Date	Event Name (Ticketed Art Event, Business Meeting/Conference, Rental/Private Event, Other)	Number of Attendees >50 miles or Ticketed Spectators	Number of Attendees <50 miles or Ticketed Spectators	Number of Event Days
Total				